

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)
(Verizon UNE Phase)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING HEARING REQUEST MOTIONS
AND MOTION TO STRIKE**

Verizon Motion for Hearings

On April 29, 2005, Verizon California Inc. (Verizon) filed a motion requesting hearings in the Verizon Unbundled Network Element (UNE) Phase of this proceeding on factual disputes associated with the cost model filed by AT&T Communications of California, Inc. and MCI, Inc. (collectively "Joint Commentors" or JC). Verizon alleges hearings are required because the most recently filed version of JC's proposed UNE cost model, HM 5.3, differs in critical ways from its predecessor version and is no longer consistent with model documentation on the record in this case. Verizon requests an opportunity to cross-examine witnesses on the newest version of the HM 5.3 cost model and the reasonableness of what Verizon considers "sweeping and largely undisclosed input changes" to the rebuttal version of HM 5.3.

A joint reply to Verizon's motion was filed by Covad Communications Company, MCI, MPower Communications Corp., Navigator Telecommunications LLC, and XO Communications Services, Inc. (collectively, "Joint Respondents"). Joint Respondents claim Verizon has not raised any issue of material fact that requires a hearing and Verizon has already had every opportunity to respond to these issues in previous filings in this proceeding. They claim Verizon's motion reargues policy issues involving the Total Element Long Run Incremental Cost (TELRIC) methodology and economic modeling choices. In their view, hearings on these issues would not enhance the record.

I agree with Joint Respondents that Verizon's motion does not raise material disputed factual issues that require a hearing. While Verizon raises many facts that it disputes in the revised version of the HM 5.3 model, these factual disputes are not necessarily material to resolving the case. As Joint Respondents point out, parties have been afforded an extensive paper hearing in this matter and have submitted sworn declarations by their numerous experts, accompanied by supporting exhibits and cost models in opening, reply and rebuttal rounds. Cross-examination of modeling experts is unlikely to enhance the record beyond the many rounds of declarations and workpapers that have already been submitted by the parties' experts containing opinions on modeling inputs and assumptions. In response to Verizon's previous request to strike the rebuttal version of HM5.3, I directed JC to file a summary table describing changes to HM 5.3 and where those changes are documented in JC's rebuttal filing. Verizon was allowed to respond to that summary table. Verizon has been given ample opportunity to present the facts relevant to the issues it raises in its motion. Live hearings will not assist the Commission in resolving dueling expert opinions on these topics.

MCI Motion for Hearings

On May 5, 2005, MCI, Inc. (MCI) filed its own motion requesting hearings in this proceeding. According to MCI, Verizon admits to a number of basic, fundamental flaws in its VzLoop model and the preprocessed loop data that is used as an input to VzLoop. Verizon did not file corrections to these admitted flaws in its rebuttal filing. If the Commission were to adopt the Verizon model to set UNE costs and prices, MCI maintains a significant additional record must be built to fully explore numerous issues with the Verizon model. Thus, MCI contends hearings are required to examine claims in Verizon's rebuttal filings regarding the Verizon cost model. Moreover, MCI requests an opportunity to file late-produced evidence on updated inputs to its HM 5.3 model.

Verizon opposes MCI's motion, contending MCI is essentially requesting the opportunity to introduce surrebuttal evidence that should have been presented in earlier filings. Verizon contends MCI is merely rearguing earlier positions and MCI should not be allowed to introduce untimely descriptions of HM 5.3 input changes or further rebut Verizon's cost modeling at a hearing. Rather, Verizon requests that portions of JC's rebuttal version of HM 5.3 be stricken from the record because it was not adequately described in rebuttal filings.

Again, I will deny the request for hearings because I agree with Verizon that MCI is essentially requesting further opportunity to present evidence on topics that have been amply covered in the opening, reply and rebuttal rounds of comments and declarations. Parties have presented voluminous comments and declarations on the two cost models, their methodologies and input assumptions. The Commission will render a decision in this matter based on the expert declarations filed thus far, which adequately cover the material topics.

Moreover, I will not strike portions of JC's rebuttal version of HM 5.3, as Verizon again requests. If the Commission finds the rebuttal version of HM 5.3 is not adequately described, the Commission will not rely on those portions that are inadequate.

MCI Motion to Strike

On May 5, 2005, MCI filed a motion to strike portions of Verizon's rebuttal testimony filed on November 9, 2004. MCI claims that portions of Verizon's rebuttal present new issues and matters that Verizon should have submitted in its direct or reply testimony. Specifically, MCI requests the Commission strike portions of Verizon's rebuttal testimony on loops, interoffice facilities, switching costs, and cost of capital. If its motion to strike is not granted, MCI requests the opportunity to present live testimony and cross-examine Verizon's witnesses at a hearing on the disputed portions of Verizon's filings.

Verizon responds that the portions of its rebuttal testimony challenged by MCI are not improper, but directly responsive to factual claims by MCI or other parties in the reply round of comments.

MCI's motion to strike is denied. Rather than dissect whether Verizon's rebuttal is responsive to earlier testimony, which given the number of issues raised by MCI would take some time to determine, I will accept the entire record as presented and determine item by item, as necessary in rendering a decision, whether the evidence is timely, supported, responsive, material and otherwise acceptable for decision-making. Verizon itself has asked that portions of MCI's rebuttal testimony be stricken and continues to maintain that certain modeling changes in the rebuttal version are not adequately described or responsive to earlier criticism. Again, the time required to sift through the disputed portions of the rebuttal testimony filed by both parties is extensive. I will evaluate which

portions of both MCI's and Verizon's rebuttal testimony can be relied on as I draft a proposed decision in this proceeding. Therefore, I will not strike any of the rebuttal testimony.

Accordingly, **IT IS RULED** that:

1. Verizon's April 29, 2005 motion requesting hearings is denied.
2. MCI's May 5, 2005 motion requesting hearings is denied.
3. MCI's May 5, 2005 motion to strike is denied.

Dated November 8, 2005, at San Francisco, California.

/s/ Dorothy J. Duda
Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Hearing Request Motions and Motion to Strike on all parties of record in this proceeding or their attorneys of record.

Dated November 8, 2005, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

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